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6 Professional Bank

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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 In Re:	)	No. 21-50028 SLJ 7
13 Evander Frank Kane,	)	Chapter 7
14	)	
15 Debtor,	)	Notice of Joinder and Joinder
16	)	by Creditor Professional Bank
17	)	in the Motion by
18	)	Creditor Zions Bancorporation
19	)	to Convert the Case to
20	)	Chapter 11 and to Appoint a
21	)	Chapter 11 Trustee
	)	
	)	Date: 3/30/21
	)	Time: 11:00 a.m.
	)	Place: Courtroom 9
	)	San Jose, California

22  
23 I

24 INTRODUCTION

25 Creditor Professional Bank hereby submits this Notice of  
26 Joinder and Joinder by Creditor Professional Bank in the Motion by  
27 Creditor Zions Bancorporation to Convert the Case to Chapter 11 and  
28 to Appoint a Chapter 11 Trustee.

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Notice of Joinder and Joinder by Creditor Professional Bank in the Motion  
by Creditor Zions Bancorporation to Convert the Case to Chapter 11 and  
to Appoint a Chapter 11 Trustee

1 II

2 SUMMARY

3 Professional Bank joins in the motion, joins in the arguments  
4 by Zions Bancorporation, and joins in requesting the result of  
5 converting this Chapter 7 bankruptcy case to a Chapter 11  
6 bankruptcy case, and appointing a Chapter 11 trustee.

7 Along with that, and as part of that same requested relief,  
8 Professional Bank also requests the reinstatement of the automatic  
9 payment arrangements that Debtor Evander Kane agreed to regarding  
10 Professional Bank and certain other banks, whereby the debt service  
11 payments on his loan with Professional Bank would be made  
12 automatically from the paycheck payments that are owed to Kane by  
13 his employer the San Jose Sharks, pursuant to the Security  
14 Agreement and UCC-1 filing in favor of Professional Bank.

15  
16 III

17 LEGAL AUTHORITY

18 Legal authority exists for one party to join in another  
19 party's motion, and in the arguments of another party's motion, and  
20 in requesting the relief that another party's motion seeks.

21 See for example: Tatung Company, Ltd. v. Shu Tze Hsu, 217  
22 F.Supp.3d 1138, 1151-52 (C.D. Cal. 2016), saying:

23 1. Legal Standard

24 [1] When reviewing whether to allow a party to join  
25 in a motion, the court will allow the joinder when either  
26 (1) the parties are so similarly situated that filing an  
27 independent motion would be redundant, or (2) the party  
28 seeking joinder specifically points out: which parts of

1 the motion apply to the joining party, the joining  
2 party's basis for standing, and the factual similarities  
3 between the joining party and moving party that give rise  
4 to a similar claim or defense. See United States v.  
5 Longoria, CR No. 89-225-FR, 1990 WL 11418, at \*4 (D. Or.  
6 Jan. 31, 1990) (allowing co-defendants to join on motion  
7 to compel discovery of informant's identity where same  
8 informant testified against all defendants); United  
9 States v. Ledbetter, No. 2:14-CR-127, 2015 WL 5954587, at  
10 \*2 (S.D. Ohio Oct. 14, 2015) (allowing parties to join in  
11 discovery motions where the exact same discovery is  
12 requested); United States v. Cerna, No. CR-08-0730 WHA,  
13 2011 WL 500229, at \*12 (N.D. Cal. Feb. 9, 2011) (holding  
14 motion to join in another's motion should not "leave the  
15 [court] guessing as to the reasons why the motions sought  
16 to be joined apply"); United States v. Svihel, No.  
17 15-cr-190 (2)(4) (DSD/LIB), 2016 WL 1212364, at \*6 (D.  
18 Minn. Feb. 25, 2016) (denying "blanket authorization to  
19 join in all motions" and requiring movant to "allege  
20 \*1152 a basis for standing" and a "factual basis for  
21 joining" each motion).

### 22 23 III

#### 24 DISCUSSION

25 Professional Bank's situation vis-à-vis Debtor Evander Kane is  
26 the same as Zions Bancorporation's situation on the subject of  
27 converting this case to Chapter 11 and appointing a Chapter 11  
28 trustee.

1       The main point is that someone other than Debtor Kane should  
2 be managing the \$29,000,000 of compensation that Kane will receive  
3 over the remaining years of his \$49,000,000 contract with the San  
4 Jose Sharks.

5       The person managing that money should have the skills and  
6 duties of a financial trustee, and that person should apply that  
7 money to the payment of Kane's significant debts and in compliance  
8 with the obligations owed by Kane to his creditors.

9       Professional Bank joins in the motion, joins in the arguments,  
10 and joins in the requested outcome (of conversion to Chapter 11 and  
11 appointment of a Chapter 11 trustee).

12       Professional Bank has standing to take these positions and to  
13 make these arguments. The standing is by virtue of being another  
14 creditor of Kane, and by being owed money by Kane to pay off  
15 approximately \$1,500,000 in loans, including through a Security  
16 Agreement and a UCC-1.

17       Professional Bank's counsel believed at the very outset of  
18 this case that it should be a Chapter 11 case and not a Chapter 7  
19 case. The Debtor is a professional hockey player with more than  
20 enough income in the next 3 to 4 years to pay off creditors in  
21 full. That income is virtually guaranteed by Kane's National  
22 Hockey League player contract. Creditors loaned many millions of  
23 dollars to Kane in reliance on that income, including terms that  
24 the income stream serve as the main collateral to repay the loans.  
25 Kane received approximately \$20,000,000 from banks with the banks  
26 relying on that stream of income as the main source of repayment  
27 of the loans. Kane received the money from those loans, he bought  
28 multiple houses in multiple cities that are occupied by multiple

1 friends and relatives, he lost millions of dollars gambling, etc.,  
2 as documented in detail in the Motion to Convert.

3 The Chapter 7 filings try to give the impression that Kane  
4 does not have the money "right now" to pay off his debts. However,  
5 Kane does have a stream of income of at least \$29,000,000 in the  
6 next 3 to 4 years, just salary from the San Jose Sharks. He is a  
7 famous and popular NHL professional hockey player, and probably  
8 also will have millions more dollars of income from endorsements  
9 during the same period of time.

10  
11 IV

12 CONCLUSION

13 Professional Bank joins in the Motion to Convert and to  
14 Appoint a Chapter 11 trustee, and Professional Bank asks that the  
15 motion be granted.

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17  
18 Dated: March 2, 2021

LAW OFFICES OF  
STEPHEN G. OPPERWALL

19  
20 /s/ Stephen G. Opperswall

21 STEPHEN G. OPPERWALL  
22 Attorneys for Creditor  
Professional Bank

23 motion.Zions.convert case.JOINDER.by PB.doc.wpd  
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